

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILDADE NELSON,
Plaintiff

V.

JOANNE MCGANN
"In all her capacities"
and
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF HEALTH AND HUMAN
SERVICES, DEPARTMENT OF
MENTAL RETARDATION,
Defendants

No. 05-11269NG

DEFENDANT DEPARTMENT OF MENTAL RETARDATION'S
PARTIAL MOTION TO DISMISS

Pursuant to Fed.R.Civ.P. 12(b)(6), the Department of Mental Retardation moves to dismiss various claims for failure to state a claim upon which relief can be granted for the following reasons:

1. Since Plaintiff failed to exhaust all the requisite administrative remedies, her claims pursuant to 42 U.S.C. 2000e are barred as a matter of law,
2. Sovereign immunity and the language of 42 U.S.C. §1983 bar claims of damages against state agencies, and
3. Massachusetts state law bars Nelson's tort claims against DMR, since
 - a. Nelson Failed to Allege Timely Written Presentment of Her Tort Claims
 - b. Even If Nelson Had Effected Presentment, the Exclusivity Provision of the Workers Compensation Act Would Bar Nelson's Claim of Intentional Infliction of Emotional Distress Against DMR; and

- c. Even If Nelson Had Effected Presentment, the Massachusetts Torts Claims Act Bars Nelson's Claim of Intentional Torts.

RESPECTFULLY SUBMITTED,
DEPARTMENT OF MENTAL
RETARDATION

By its attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL

_____/s/
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Dated: January 6, 2006

CERTIFICATE OF SERVICE

I certify that on this 6th day of January 2006 I served the above document on the plaintiff, Wildade Nelson, via regular mail postage prepaid to her address of record, 22 Kessler Farm Dr., Nashua, NH 03063

Ernest L. Sarason, Jr.